

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011366

06/05/2015

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
T. DeRaddo
Deputy

VAN E FLURY

VAN E FLURY
P O BOX 875
LAVEEN AZ 85339

v.

GATEWAY CHEVROLET INC

WILLIAM JAMES FISHER

JUDGE REA

RULING

The Court received and considered the parties' briefs on Defendant Gateway Chevrolet, Inc.'s [Defendant] Motion To Designate Plaintiff Van E. Flury a Vexatious Litigant Pursuant to A.R.S. §12-3201. Plaintiff Van E. Flury [Plaintiff] requests oral argument. However, the Court finds the briefing sufficient, and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. rule 7.1[c][2] to expedite the business of the Court. The Court herein issues the following ruling.

General Background. Defendant alleges that Plaintiff is a vexatious litigant and herein seeks to curb Plaintiff's alleged misuse of the judicial system. Briefly stated, Defendant asserts that Plaintiff files groundless actions against other litigants for purposes of harassment. In support of its allegations, Defendant asserts that Plaintiff has been a pro se litigant in at least twenty-eight [28] Maricopa County Superior Court actions since February of 2007. Further, that thirteen of these actions were adversely decided against Plaintiff and/or dismissed.¹ In addition, that since 2007 Plaintiff has filed fifteen cases in U.S. District Court, District of Arizona and

¹ Affidavit of Chris Ford, Esq.
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seven separate bankruptcy petitions in the U.S. Bankruptcy Court, District of Arizona.² In all, Plaintiff has filed approximately 53 separate lawsuits, including seven bankruptcy petitions since 2002. The Bankruptcy Court has entered orders that all filing by Plaintiff must be assigned to the same court.³

Defendant further alleges that the pending action is this lawsuit was brought without substantial justification. Plaintiff alleged Defendant had interfered with its business dealings with an auction company. However, Plaintiff later admitted in discovery that he, in fact, reached an accord and satisfaction with the auction company and was paid an additional thousand dollars [\$1000] in compensation. Thus, it was clear that there existed no contractual relationship between Plaintiff and the auction company and further that Plaintiff suffered no damages. In addition, Defendant asserts that Plaintiff abused the discovery process in this action and unreasonably expanded the litigation, all necessitating the expenditure of excessive litigating expenses.

Plaintiff does not, in his response, address the substance of any of the allegations made that the actions filed were frivolous and without merit. In fact, there has been no substantive effort made by Plaintiff to provide any merit-based explanation for any of his prior litigation filings. Rather he simply and incorrectly argues that the vexatious litigant statute has no application in this matter because it has no retroactive application to the numerous circumstances cited by Defendant. Under these circumstances, a hearing is not warranted.

Standard of Review. The Court possesses both inherent authority and statutory authority to curtail a vexatious litigant's ability to misuse the court system and additionally file multiple groundless legal actions.⁴ The recently-enacted statute is aimed at curtaining pro se litigants from initiating groundless litigation; abusing the discovery process; unreasonably expanding or delaying the court's process; and of course, eliminate the practice of using the litigation process as a tool of harassment. The statute provides a definition of vexatious conduct as including any of the following:

- Repeated filing of court actions solely or primarily for the purpose of harassment;
- Unreasonably expanding or delaying court proceedings;
- Court actions brought without substantial justification; and
- Engaging in abuse of discovery.⁵

² Affidavit of Ford.

³ Affidavit of Ford.

⁴ *A.R.S. §12-3201; Acker v. CSO Chevira*, 188 Ariz. 252 [App. 1997].

⁵ *A.R.S. §12-3201 [C]*.

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As access to the courts is a fundamental right, a request to deem a pro se litigant as a vexatious litigant is one that must be carefully considered and entered only sparingly and where appropriate.⁶

Discussion. The Court, having reviewed the claim filed under this cause of action, concurs with Defendant that the action was frivolous and lacked merit. Further, that there appears to be merit to Defendant's argument that this action was filed for purposes of harassment or at a minimum demonstrated a pattern of harassment. It is also clear from a review of this matter that Plaintiff engaged in disruptive discovery behavior and delay tactics causing increased litigation expenses.

As previously stated, Plaintiff's filings of claims in U. S. District Court and Bankruptcy Court have been or are being currently monitored by one bankruptcy judicial officer/division. This monitoring is taking place because of or as a result of Plaintiff's prior bankruptcy filings. It thus appears that the bankruptcy court has taken steps to monitor the substantive nature of Plaintiff's future filings. This monitoring is taking place to supposedly curtail the filing of frivolous matters.

The gross number of previous civil filing by Plaintiff in this court and federal court [a total of at least 58] is also on its own alarming. Particularly when one considers that approximately half of all cases filed in this court [Maricopa County Superior Court] were subsequently dismissed. These facts demonstrate something more than mere litigiousness. Rather, it appears clear that a substantial number of these case filings were filed without merit. In each of these separate civil filings named defendant[s] all had the burden and expense of defending these respective claims. This history compels the conclusion that a large number of these civil filings were frivolous. This pattern of filing frivolous lawsuits also demonstrates a pattern of using the litigation process as a means of harassment.

Considering these circumstances and applying the statutory standard by which vexatious conduct is measured, this Court finds as follows:

- That a substantial number of the cases filed in this court, including this case, were subsequently dismissed demonstrating that they were filed without substantial justification;
- That Plaintiff's actions/inactions in this above entitled case clearly and unreasonably expanded and/or delayed these proceedings; and
- The pattern of repeated filing of court actions, many of which were without merit, leads clearly to the conclusion that these matters were filed for purposes of harassment.

⁶ *DeVries v. State*, 219 Ariz. 314 [App. 2008]; *DeLong v. Hennessey*, 912 F.2d 1144 [9th Cir. 1990].

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For the reasons stated and those set forth in Defendant's moving papers, this Court concurs that this pro se litigant engaged in vexatious conduct, as that term is defined by A.R.S. §12-3201.

As a consequence, and pursuant to the term of Administrative Order No. 2014-134, this Court refers this matter to the Civil Presiding Judge for consideration of whether to issue a vexatious litigant administrative order.

IT IS ORDERED granting Defendant's Motion To Designate Plaintiff Van E. Flury a Vexatious Litigant pursuant to A.R.S. §12-3201;

IT IS FURTHER ORDERED, pursuant to Administrative Order No. 2014-134 referring this matter to the Civil Presiding Judge for consideration of whether to issue a vexatious litigant administrative order.